
STATUTORY INSTRUMENTS

2004 No. 756

The Civil Aviation (Working Time) Regulations 2004

Citation and commencement

1. These Regulations may be cited as the Civil Aviation (Working Time) Regulations 2004 and shall come into force on 13th April 2004.

Scope

2. These Regulations apply to persons employed to act as crew members on board a civil aircraft flying for the purposes of public transport.

Interpretation

3. In these Regulations—

“the 1974 Act” means the Health and Safety at Work Act 1974⁽¹⁾;

“block flying time” means the time between an aircraft first moving from its parking place for the purpose of taking off until it comes to rest on its designated parking position with all its engines stopped;

“the CAA” means the Civil Aviation Authority;

“cabin crew” means a person on board a civil aircraft, other than flight crew, who is carried for the purpose of performing in the interests of the safety of the passengers, duties that are assigned to him for that purpose by the operator or the commander of that aircraft;

“calendar year” means the period of 12 months beginning with 1st January in any year;

“collective agreement” means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992⁽²⁾ the trade union parties to which are independent trade unions within the meaning of section 5 of that Act;

“the Commission” means the Health and Safety Commission referred to in section 10(2) of the 1974 Act;

“crew member” means a person employed to act as a member of the cabin crew or flight crew on board a civil aircraft by an undertaking established in the United Kingdom;

“employer” means an undertaking established in the United Kingdom by whom a crew member is (or where the employment has ceased, was) employed;

“employment” in relation to a crew member, means employment under his contract, and “employed” shall be construed accordingly;

“the Executive” means both the Health and Safety Executive referred to in section 10(5) of the 1974 Act, and the Health and Safety Executive of Northern Ireland⁽³⁾;

(1) 1974 c. 37.

(2) 1992 c. 52.

(3) S.I.1998/2795. Article 3 of this Order establishes the Health and Safety Executive of Northern Ireland which was previously known as the Health and Safety Agency for Northern Ireland which was established under article 12 of S.I. 1978/1039.

“flight crew” means a person employed to act as a pilot, flight navigator, flight engineer or flight radiotelephony operator on board a civil aircraft;

“inspector” means a person appointed by the CAA under paragraph 1 of Schedule 2;

“the purposes of public transport” has the same meaning as that contained in article 130 of the Air Navigation Order 2000(4);

“protection and prevention services or facilities” means those services or facilities that are designed to preserve the health and safety of the crew member from any hazards that may threaten his health or safety during the course of his undertaking his work and are capable of being provided by his employer;

“relevant agreement”, in relation to a crew member, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the crew member and his employer;

“the relevant requirements” means regulations 5(2), 6, 7(2)(a), 8, 9 and 10;

“relevant training” means the training required to enable a person to perform the duties of flight crew or cabin crew carried out or undertaken whilst employed by an employer;

“rest break” and “rest period”, in relation to a crew member, means a period which is not working time;

“scheme” means a scheme operated by an employer and approved by the CAA pursuant to article 72(1)(b) of the Air Navigation Order 2000;

“standby”, in relation to a crew member, means a crew member who in accordance with the terms of his employment holds himself ready to act as a crew member if called upon to do so by his employer;

“workforce agreement” means an agreement between an employer and crew members employed by him or his representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied;

“working time”, in relation to a crew member means—

- (a) any period during which he is working at his employer’s disposal and carrying out his activity or duties;
- (b) any period during which he is receiving relevant training, and
- (c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement,

and “work”, “works” and “to work” shall be construed accordingly.

Entitlement to annual leave

4.—(1) A crew member is entitled to paid annual leave of at least four weeks, or a proportion of four weeks in respect of a period of employment of less than one year.

(2) Leave to which a crew member is entitled under this regulation—

- (a) may be taken in instalments;
- (b) may not be replaced by a payment in lieu, except where the crew member’s employment is terminated.

(4) S.I. 2000/1562 to which there are amendments not relevant to these Regulations.

Health assessments

5.—(1) An employer shall ensure that each crew member employed by him is entitled to a free health assessment before he commences his employment and thereafter at regular intervals of whatever duration may be appropriate in the case of the crew member.

(2) Subject to paragraph (3), no person shall disclose a health assessment referred to in paragraph (1) made in respect of a crew member to any person other than that crew member without that crew member's consent in writing.

(3) A registered medical practitioner who makes a health assessment referred to in paragraph (1) may advise the employer of the crew member in question that the crew member is suffering from health problems which the practitioner considers to be connected with the fact that the crew member works during night time.

(4) Where—

- (a) a registered medical practitioner has advised an employer pursuant to paragraph (3); and
- (b) it is possible for the employer to transfer the crew member to mobile or non-mobile work—
 - (i) for which the crew member is suited, and
 - (ii) which is to be undertaken during periods such that the crew member will cease to work during night time,

then the employer shall transfer the crew member accordingly.

(5) A health assessment referred to in paragraph (1)—

- (a) may be conducted within the National Health Service, and
- (b) is free if it is undertaken at no cost to the crew member to whom it relates.

(6) For the purposes of this regulation, a crew member works during night time when he works at any time between the hours of 2.00 am and 4.59 am local mean time; and in this paragraph "local mean time" means the time to which a crew member is acclimatised for the purposes of a scheme.

Health and safety protection at work

6. An employer shall ensure that each crew member employed by him is at all times during the course of that employment provided with adequate health and safety protection and prevention services or facilities appropriate to the nature of his employment.

Pattern of work

7.—(1) Where an employer intends to organise work according to a certain pattern he shall take into account the general principle of adapting work to the worker to the extent that is relevant to the objective of protecting workers' health and safety.

(2) Without prejudice to the generality of paragraph (1), in a case where an employer intends to organise work according to a certain pattern he shall—

- (a) ensure that pattern affords the crew member adequate rest breaks, and
- (b) take into account the need to ensure, where practicable, that pattern offers the crew member work, within the scope of his duties, that alleviates monotony or working at a pre-determined rate.

Provision of information

8.—(1) When requested to do so by the CAA, an employer shall provide the CAA with such information as it may specify relating to the working patterns of crew members in his employ.

(2) Any information which is generated by an employer relating to the working patterns of crew members shall be retained by the employer for a period of not less than two years.

Maximum annual working time

9. An employer shall ensure that in any month—
- (a) no person employed by him shall act as a crew member during the course of his working time, if during the period of 12 months expiring at the end of the month before the month in question the aggregate block flying time of that person exceeds 900 hours; and
 - (b) no crew member employed by him shall have a total annual working time of more than 2,000 hours during the period of 12 months expiring at the end of the month before the month in question.

Rest days

10.—(1) Without prejudice to regulation 4, an employer shall ensure that all crew members employed by him are notified in writing as soon as possible of their right to rest days which shall be free of all employment duties including acting as a standby.

- (2) For the purposes of this regulation, rest days are—
- (a) not less than 7 days in each month during which a crew member works for his employer, which may include any rest periods required under article 72 of the Air Navigation Order 2000(5); and
 - (b) not less than 96 days in each calendar year during which a crew member works for his employer, which may include any rest periods required under article 72 of the Air Navigation Order 2000.

Enforcement

11. The provisions of Schedule 2 to these Regulations shall apply in relation to the enforcement of the relevant requirements.

Offences

12.—(1) Any person who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The provisions of paragraph (3) shall apply where an inspector is exercising or has exercised any power conferred by Schedule 2.

- (3) It is an offence for a person—
- (a) to contravene any requirement imposed by an inspector under paragraph 2 of Schedule 2;
 - (b) to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of paragraph 2(2)(e) of Schedule 2 require an answer;
 - (c) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice referred to in paragraphs 3 and 4 of Schedule 2 (including any such notice as is modified on appeal);
 - (d) intentionally to obstruct an inspector in the exercise or performance of his powers;
 - (e) to use or disclose any information in contravention of paragraph 8 of Schedule 2;

(5) S.I. 2000/1562 to which there are amendments not relevant to these Regulations.

- (f) to make a statement which he knows to be false or recklessly to make a statement which is false where the statement is made in purported compliance with a requirement to furnish any information imposed by or under these Regulations.
- (4) Any person guilty of an offence under paragraph (1) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (5) A person guilty of an offence under paragraph (3)(b) or (d) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person guilty of an offence under paragraph (3)(c) shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine or both.
- (7) A person guilty of an offence under paragraph (3)(a), (e) or (f) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment—
 - (i) if the offence is under paragraph (3)(e), to imprisonment for a term not exceeding two years or a fine or both,
 - (ii) if the offence is under paragraph (3)(a) or (f), to a fine.
- (8) The provisions set out in regulations 13 to 17 shall apply in relation to the offences provided for in paragraphs (1) and (3).

Offences due to fault of other person

13. Where the commission by any person of an offence is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first mentioned person.

Offences by bodies corporate

14.—(1) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Restriction on institution of proceedings in England and Wales

15. Proceedings for an offence shall not be instituted in England or Wales except by an inspector or by, or with the consent of, the Director of Public Prosecutions.

Prosecution by inspectors

16.—(1) If authorised in that behalf by the CAA, an inspector may prosecute proceedings for an offence before a magistrates' court even though the inspector is not of counsel or a solicitor.

- (2) This regulation shall not apply in Scotland.

Power of court to order cause of offence to be remedied or, in certain cases, forfeiture

17.—(1) This regulation applies where a person is convicted of an offence in respect of any matter which appears to the court to be a matter which it is in his power to remedy.

(2) In addition to or instead of imposing any punishment, the court may order the person in question to take such steps as may be specified in the order for remedying the said matters within such time as may be fixed by the order.

(3) The time fixed by an order under paragraph (2) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(4) Where a person is ordered under paragraph (2) to remedy any matters, that person shall not be liable under these Regulations in respect of that matter in so far as it continues during the time fixed by the order or any further time allowed under paragraph (3).

Remedies

18.—(1) A crew member may present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has under regulation 4, 5(1), (4), 7(1) or 7(2)(b).

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months beginning with the date on which it is alleged—

(i) that the exercise of the right should have been permitted (or in the case of a rest period or annual leave extending over more than one day, the date on which it should have been permitted to begin), or

(ii) the payment under regulation 4(2)(b) should have been made;

as the case may be; or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an employment tribunal finds a complaint under regulation 4, 5(1), (4), 7(1) or 7(2)(b) well-founded, the tribunal—

(a) shall make a declaration to that effect; and

(b) may make an award of compensation to be paid by the employer to the crew member.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the employer's default in refusing to permit the crew member to exercise his right; and

(b) any loss sustained by the crew member which is attributable to the matters complained of.

Signed by authority of the Secretary of State for Transport

11th March 2004

Tony McNulty
Parliamentary Under Secretary of State
Department for Transport